



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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RODERICK J. FRASER, JR.
VICE CHAIRMAN

Docket # 2012-17
315 Palmer Road
Ware, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, § 26G, and Chapter 6, section 201, relative to a decision of the Ware Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Claudio Ferrentino, Giuseppe Ferrentino and Mario Ferrentino (hereinafter referred to as the Appellants). The building, which is the subject of the order, is located at 315 Palmer Road, Ware, Massachusetts, and features a business establishment operated under the name of Teresa's Restaurant.

B) Procedural History

By written notice received by the Appellants on October 19, 2012, the Ware Fire Department issued an Order of Notice to the Appellants informing them of the provisions of M.G.L. c. 148, s. 26G and s. 26G½, requiring the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The Appellants filed an appeal of said Order with this Board on December 3, 2013. The Board held a hearing on this matter on February 13, 2013, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellants were: Attorney Daniel D. Kelly; Claudio Ferrentino; Giuseppe Ferrentino; and Mario Ferrentino. Appearing on behalf of the Ware Fire Department was Lt. Edward Wloch.

Present for the Board were: Maurice M. Pilette, Chairman; Alexander MacLeod; Aime DeNault; and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be decided

Whether the Board should affirm, reverse or modify the determination of the Ware Fire Department requiring sprinklers in the Appellants building, in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal filed by the Appellants
2. Order of Notice of the Ware Fire Department
3. Affidavit of Claudio Ferrentino
4. Application for Special Permit to Town of Ware Planning Board
5. E-Mail from Ware Building Department to Appellant on applicability of Chapter 304
6. Notice of Public Hearing on Special Permit
7. Approval of Special Permit (copy of decision plus application documents)
8. Certification of 'No Appeal' letter from Town Clerk
9. Town of Ware Building Permit
10. New Construction Sign Off Sheet
11. Town of Ware Certificates of Inspection for 2011 and 2012
12. 1st Notice of Hearing to Parties
13. Joint Motion to Continue Hearing signed by parties
14. 2nd Notice of Hearing to Appellants
15. 2nd Notice of Hearing to Ware Fire Department
16. Copies of two Memoranda that accompany hearing notices
17. Affidavit of Margaret Sorel (authenticates e-mails)
18. Ware Inspection Card

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellants on October 19, 2012, the Ware Fire Department issued an Order of Notice to the Appellants informing them of the provisions of M.G.L. c. 148, s. 26G and s. 26G½, requiring the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The Appellants filed an appeal of said Order with this Board on December 3, 2013. The Board held a hearing on this matter on February 13, 2013, at the Department of Fire Services, Stow, Massachusetts.
- 2) At the outset of the hearing, Lt. Wloch of the Ware Fire Department indicated that while the Order of Notice to the Appellant cited both M.G.L. c. 148, s. 26G and s. 26G½, the primary enforcement of the Order of Notice was based on M.G.L. c. 148, s. 26G. Both parties indicated that they would move forward on the issue of whether the provisions of M.G.L. c. 148, s. 26G are applicable.
- 3) The Appellants testified that the building houses Teresa's Restaurant, a family operated restaurant that has been in business for over 32 years. Prior to the construction activity which is the subject of this appeal, the building consisted of approximately 8,272 s.f., excluding the basement area. In September 2010, the Appellants applied for a permit with the Town of

Ware to construct a 516 s.f. expansion of the existing structure and a 212 s.f. deck and ramp for handicapped access, required by Massachusetts access laws.

- 4) The representatives of the Appellant argued that such construction is minor in nature, affected just 6% of the overall building size and is not “major” in scope as required by the statute. It was also their opinion that the order to require sprinklers after starting the work is unfair, since the Ware Fire Department had apparently originally approved the plans without the need for sprinklers.
- 5) Lt. Wloch of the Ware Fire Department indicated that the Order was issued based upon the provisions of M.G.L. c. 148, s. 26G, which requires the installation of an adequate system of automatic sprinklers upon the construction of any addition, as long as the building and the addition are over 7,500 s.f. in the aggregate. Lt. Wloch indicated that the original fire department approval may have been based upon the belief that the construction involved only a deck and a handicap ramp.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The relevant provisions of M.G.L. c. 148, s. 26G, state, (in pertinent part): “Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code.” This law reflects amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008. The provisions apply to “the construction of buildings, structures or additions or major modifications (emphasis added) thereto, which total, in the aggregate, more than 7,500 gross square feet permitted after January 1, 2010” (Sec. 6, Chapter 508 of the Acts of 2008).
- 2) On October 14, 2009, this Board issued an advisory memorandum regarding the then recent amendments to M.G.L. c. 148, s. 26G, which are applicable in certain non-residential buildings. In said memorandum, the Board noted that the legislative activity to amend s. 26G arose in the aftermath of a tragic commercial building fire, which occurred in Newton, Massachusetts on February 9, 2000, resulting in the death of five individuals. Over the course of several decades, that building had undergone numerous renovations and modifications without the need to install a fire sprinkler system. In said memorandum, the Board noted that the Legislature intended to give some protection to owners of existing/older buildings against the large expense of installing sprinklers by requiring the installation only upon some triggering event: (1) a new building or structure is constructed; (2) an addition is built onto an existing building or structure; or (3) major alterations or modifications are planned for an existing building. Additionally, it was noted that the building must total more than 7,500 gross s.f. in floor area, in the “aggregate” (existing building and addition).
- 3) Based upon the evidence, it is clear that the subject building consists of well over 7,500 s.f. of floor area and that construction of an addition to the building occurred after the effective date of the statute. The Appellant provided no evidence to support a contrary finding.

- 4) The Appellant’s position, that the addition and related construction are minor in nature since it affects just 6% of the entire building, would have some merit if the building had only undergone renovations. In such “renovation” cases, the Board carefully reviews the nature, extend, scope and costs of the work to determine if the work is considered “major.” However, such analysis is unnecessary in this case since it involves an addition.
- 5) In projects involving additions, if the addition is being constructed to an existing building and the addition creates a building with a combined total of more than 7,500 s.f. “in the aggregate,” the provisions of M.G.L. c. 148, s. 26G requires an adequate system of sprinklers to be installed throughout the building (addition and the existing building), without regard to the existence or extent of alterations, to the previously existing building.

G) Decision of the Automatic Sprinkler Appeals Board

Based upon the evidence presented at the hearing and the aforementioned reasons, the Board hereby **upholds** the determination of the Ware Fire Department, requiring the Appellants to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G. Accordingly, an adequate system of automatic sprinklers shall be installed throughout the building, in accordance with the following terms and conditions:

- Plans for the installation of an adequate sprinkler system shall be submitted to the Head of the Fire Department no later than 90 days from the date of this decision (April 4, 2013); and
- The installation of an adequate sprinkler system shall be completed by July 1, 2014.

H) Vote of the Board

Maurice M. Pilette, Chairman	In Favor
Alexander MacLeod	Opposed
Aime DeNault	In Favor
George Duhamel	In Favor

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I) Right of Appeal

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



Maurice M. Pilette, Chairman

Dated: April 4, 2013

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

Daniel D. Kelly, Esq.
115 State Street, Suite 300
Springfield, Massachusetts 01103

Lt. Ed Wloch
Ware Fire Department
200 West Street
Ware, Massachusetts 01082